

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DUKE REINBOLT, CARRIE
PRESTON and GREGORY PRESTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CATHLEEN REINBOLT,

Respondent-Appellant.

UNPUBLISHED
January 19, 2001

No. 225325
Bay Circuit Court
Family Division
LC No. 97-006104-NA

Before: Sawyer, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent Cathleen Reinbolt appeals as of right from a January 7, 2000, trial court order terminating her parental rights to her three minor children, Duke Reinbolt (d/o/b 11/17/88), Carrie Preston (d/o/b 7/10/92) and Gregory Preston (d/o/b 12/01/93), pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).¹ We affirm.

A two-prong test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). We review the family court's decision for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly

¹ At the time of termination, the two younger children were placed with their father, Gregory Preston, Sr. He and respondent separated and divorced during these proceedings, and termination of his rights was not sought. Meanwhile, the oldest child was in foster care, the parental rights of his natural father, Binh Nguyen, were not at issue during these proceedings because the court was not aware of his identity until after the proofs closed.

erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake had been made. *Miller, supra*.

The applicable statutory subsections, MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The conditions which led to adjudication included respondent's lack of response to aggressive and violent conduct on the part of the oldest child, directed toward his two younger siblings, and inappropriate sexual contact between the three siblings. Over the two years of proceedings in this case, despite a slow start, Family Independence Agency intervention and services successfully addressed these issues with the children. The children's placements in safe, stable and structured homes brought an end to most, if not all, of the inappropriate behavior. Counseling provided for the children, though not nearly complete, was slowly uncovering details about various incidents. The combined efforts of the counselors and new caregivers were reconditioning the children, allowing them to understand that their previous behavior was unacceptable and teaching them appropriate interpersonal boundaries.

Respondent, meanwhile, had seen little progress throughout the two years of intervention. The children were removed from respondent's custody because of her inability to protect them from each other. At the outset of these proceedings, the principle reason for this inability was identified as respondent's refusal to believe that the purported incidences of abusive behavior between the children had occurred. Testimony of the case workers and counselors established that two years later, respondent's measure of acknowledgment and acceptance had not significantly increased. Although respondent points to testimony of her counselor indicating that respondent showed progress during her last two counseling sessions, that counselor also testified that respondent had stopped counseling two months before the termination hearing and that

respondent had vacillated between acceptance and denial of the children's allegations during the previous year.

Each of the professionals involved in the case testified that at a minimum, respondent needed to accept that the children's allegations, even if ultimately proven untrue, presented issues needing to be addressed rather than ignored. However, the evidence showed that two years post-removal respondent had still failed to categorically acknowledge the seriousness of the alleged potential abuse and the observed sexual acting-out. Testimony suggested that respondent needed one to two years of consistent progress in counseling before the children would be safe in her care. Given these circumstances, and notwithstanding that the children were resolving their issues and thriving in their current placements, the trial court did not err in concluding that with respect to respondent, the conditions that led to the adjudication continued to exist at the time of termination. Clear and convincing evidence supported termination pursuant to § 19b(3)(c)(i).

For much the same reasons, there also existed clear and convincing evidence supporting termination pursuant to § 19b(3)(g). Respondent had not provided proper care while she had custody of the children, allowing sibling violence to escalate to a point where her five-year-old daughter was pushed out of a second story window by her nine-year-old son, and also allowing sexual abuse by an older cousin of the children to develop and progress to abuse and sexual acting-out between the siblings.² Following FIA intervention the children had settled and begun to address these problems in their new placements with the help of their new caregivers. Continued progression, according to the professionals involved, would come only with stability of environment and finality of proceedings. With at least one to two years of further counseling needed before respondent could successfully address her issues related to these problems, it is clear that respondent could not provide proper care and custody within a reasonable time.

Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000).

In testifying, each of the professionals involved in the case admitted that the love and loyalty between respondent and her children was strong. Each conceded that termination would have adverse effects on the children. However, each also testified that these initial adverse effects could and would be overcome by the children's continued progress in addressing their issues and by the stability of placement in safe, secure and structured environments. Given that the testimony also indicated that relapses in the children's progress and incidents of negative behavior coincided with respondent's visitations, both supervised and unsupervised, the trial

² Though the sexual abuse allegations were not substantiated, and the severity of some purported incidents not detailed, by the time of termination the children had admitted to various counselors their involvement in conduct that would clearly fall within the parameters of the criminal sexual conduct statutes. Regardless of the ultimate nature of these incidents, the truth of their occurrence cannot be disputed. As the trial court indicated, the activities described by the children to their counselors evidenced sexual awareness far beyond their years.

court's decision not to conclude that termination was clearly not in the child's best interest is supported by the record.

Affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald